

# CITY OF OAKLAND

## AGENDA REPORT

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OFFICE OF THE CITY CLERK  
JAN 24 2006

**To:** Office of the City Administrator  
**Attn:** Deborah Edgerly  
**From:** Police Department  
**Date:** January 24, 2006

2006 JAN 12 PM 1:25

**Re:** **A Status Report from the Chief of Police Outlining the Oakland Police Department's Efforts to Implement the Provisions Required in the Negotiated Settlement Agreement of Delphine Allen, et al, v. City of Oakland, et al, United States District Court Case No. C00-4599 (TEH)**

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### SUMMARY

This report summarizes the measures implemented by the Oakland Police Department (OPD) in response to the *Seventh Quarterly Report* submitted by the Independent Monitoring Team (IMT) and filed with the U.S. District Court on December 7, 2005. This report covers the fourth quarter reporting period from October 1, 2005, through December 31, 2005; it addresses concerns identified by plaintiff's counsel, articulated in their *Joint Status Conference Statement* dated December 5, 2005, and contains a summarized analysis of the Department's compliance status and implementation efforts since the last report.

### FISCAL IMPACT

This report is information only. No fiscal impacts are included.

### BACKGROUND

On January 22, 2003, the City of Oakland and the Oakland Police Department (OPD) entered into a Negotiated Settlement Agreement (NSA), resulting from allegations of police misconduct raised by private plaintiffs, *Delphine Allen, et al., v. City of Oakland, et al.*, in a civil lawsuit. Both parties entered into this Settlement Agreement with the intention of promoting police integrity and preventing conduct that deprives persons of their Constitutional Rights. All Police Department personnel have been instructed to act in full compliance with the provisions contained in the Settlement Agreement. Under the direction of a Federal Judge, status conferences are frequently conducted to track the progress associated with the NSA, and address all other pending matters relative to the Agreement.

In accordance with the Negotiated Settlement Agreement (Agreement), Section XIII.II, the IMT is required to submit quarterly reports to the court, and all parties (stakeholders) identified in the Agreement. The purpose of the quarterly reports is to assess the level of compliance achieved within the Agreement by the Police Department and the City, and evaluate the status of overall implementation efforts.

On December 8, 2005, the Department appeared in court for a subsequent status conference to provide Judge Thelton Henderson with an update on the Department's overall compliance status since the August 25, 2005, court appearance.

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## KEY ISSUES AND IMPACTS

### General Status of Compliance

Table 1

#### Compliance Progress Summary

| TASK STATUS                         | NUMBER OF TASKS |
|-------------------------------------|-----------------|
| Tasks Due as of December 8, 2005    | 51              |
| Tasks in Policy Compliance          | 43 of 51        |
| Tasks in Training Compliance        | 17 of 36        |
| Tasks in Actual Practice Compliance | 7 of 50         |

There are a total of 52 tasks outlined in the NSA; however the Department is only required to track 51. One task is classified as “housekeeping” and does not require deliverables. Task 17 (audit, review and evaluation of Internal Affairs Division functions) refers to another policy task in the Agreement, leaving 50 tasks that are tracked for actual compliance. The IMT has deemed OPD in actual practice with 7 of 50 tasks.

Forty-three (43) of the 51 tracked tasks have reached policy compliance, 36 tasks still require training of personnel; of those 36 tasks OPD has completed training on 17 tasks.

### 7<sup>th</sup> Status Report of the Independent Monitoring Team

The IMT released its most current report (*Seventh Quarterly Report*) to the court on December 7, 2005.

### Accomplishments

- **Management Assessment Program (MAP) Meetings** – The Department was recognized by the IMT for its ability to quickly provide managers and supervisors with up-to-date information regarding policy implementation and timely completion of assigned tasks. Additionally, the IMT observed a number of commanders actively engaged in planning discussions and problem solving. In its report, the IMT noted that a number of individuals throughout the Department appear to be growing into their new roles and stepping up as leaders in ways the monitors had not seen previously (Pg viii).
- **Office of Inspector General (OIG)** – OPD’s Office of Inspector General has developed a comprehensive plan that makes individual managers and commanders responsible for monitoring the status of each Settlement Agreement task by continually reviewing progress made through audits, inspections, and problem solving whenever deficiencies

are noted. The IMT noted it was encouraged by the Department's strong working relationship with the City Attorney's Office in making fair, appropriate, and consistent decisions in relation to the Negotiated Settlement Agreement and commended the compliance plan because "we believe that the plan, coupled with sustained leadership, offers OPD a necessary roadmap towards compliance" (Pg viii).

- **Interactions with Outside Agencies** – The Department's interaction with other law enforcement agencies is significant in affecting the change that is needed to fulfill the requirements and intent of the Negotiated Settlement Agreement. Over the past several months the Department has increasingly taken advantage of professional resources, networking, and training opportunities available to law enforcement officials, a fact recognized by the IMT. During this reporting period, commanders and supervisors at every level participated in training sessions designed to address specific challenges faced by the Department. The IMT expressed approval at the Department's increased communications with other law enforcement agencies and policing organizations, stating these actions "are signs of real change underway at the Department" (Pg ix).

#### IMT Areas of Concern

The IMT identified several challenges facing the Department and noted areas of concern. Two separate audits showed officers who observe, or otherwise encounter, acts of misconduct frequently do no report it, and the Department does not hold them accountable for this act of dereliction. There was also a concern that OPD is not investigating allegations of retaliation against officers who do report misconduct. In addition there was significant concern regarding continual delay in policy creation and implementation.

#### December 8, 2005 Status Conference Update

On December 8, 2005, the City Administrator, Chief of Police, and executive Police Department personnel attended a Status Conference Hearing with Judge Thelton Henderson. Judge Henderson began the hearing by saying how pleased he was with the Department's progress in "growing into its role," as it related to Department efforts to implement and train on the policies addressed in the NSA. He also acknowledged Chief Tucker's success in bringing more energy to the reform efforts and changing the Department's attitude. Judge Henderson was concerned however, with the number of compliance deficiencies noted in the 7<sup>th</sup> Status Report of the Independent Monitoring Team.

The Department was instructed to make its highest priority full implementation of the *Use of Force* policy by setting and meeting deadlines. Failure to meet the deadlines will result in a court order and imposed sanctions, and/or individuals being held in contempt.

### Remarks from the Plaintiff's Attorneys

The plaintiff's attorneys suggested that additional time may be required to thoroughly conduct training on the *Use of Force* policy, and should therefore be granted to the Police Department. Also, delayed implementation of PIMS has caused concern over the OPD's ability to accurately assess its effectiveness prior to the NSA deadline. There was a question as to whether a 12-month period would be a sufficient amount of time to adequately determine the program's effectiveness. The plaintiff's attorney urged the IMT to assess the situation and provide a determination.

Plaintiff's spoke of their concern with the quality of investigations conducted by the Department's Internal Affairs Division and expressed that special attention should be given to retaliation cases. They also expressed a possible need to view IAD cases to verify adherence to the new policies. It is their belief that the confidentiality agreement signed at the beginning of the case allows such viewing access.

The next Status Conference Hearing is scheduled for Thursday, April 20, 2006 at 10:00 a.m., in the Judge's chambers in San Francisco, CA, Courtroom 12, 19<sup>th</sup> Floor. The general public may attend the public portion of the hearing at 10:30 am.

### **POLICY DESCRIPTION**

- **Compliant Processing and Internal Investigations (M-Series)** – Published on December 6, 2005, this policy covers 18 tasks in the Negotiated Settlement Agreement. On December 10, 2005, supervisors and commanders attended an eight hour train-the-trainer course for the new M-Series policy. All other Department personnel attended a two hour training course over the period of December 12 - 23, 2005. The policy states that all complaints made by individuals will be assigned a tracking number and entered into the Internal Affairs Division (IAD) database. Cases found to be "sustained" will no longer be reviewed by members of the accused officer's chain of command, but assigned directly to an IAD commander. The new discipline policy sets clear guidelines for assessing penalties associated with sustained findings of Manual of Rules violations.
- **Redoubling Efforts in IAD** – After the discovery of additional un-investigated complaints at the Internal Affairs Division, Judge Henderson issued an order requiring the Department to "re-double its efforts" at the Internal Affairs Division. As a result, the Department acquired external investigative resources from the Office of Independent Review located in San Diego, CA. The external investigators have been tasked with examining patterns and practices of complaint intake and investigation procedures used by the Department. They are to identify and report any discrepancies directly to the court.

On October 17, 2005 the Office of Inspector General initiated an inspection of IAD intake files for un-investigated complaints. An audit is currently being conducted; therefore the results have not been released. Additionally, staffing in IAD has been increased to include

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managers and investigators who have been trained by a leading expert in the field. Beginning January 2006, a sergeant will be assigned full time to audit IAD investigations, and the Department will continue its collaboration with the external investigators.

- **Increased Involvement of the Oakland Office of the City Attorney (OCA)** - Cases of retaliation against officers who reported misconduct are being reviewed by the OCA in an effort to determine if additional investigative steps should be taken. Additionally, any future allegations of retaliation will be submitted to the OCA early in the investigation for their advice and recommendations during the investigative process.
- **Use of Force Reporting and Investigation (K-Series)** – Sent to the IMT and Stakeholders for review on December 7, 2005, the K-Series Policy covers six NSA tasks. Use of Force investigations and review boards will be conducted in a more detailed, thorough, and timely manner; and OPD will increase the level of reporting for all types and uses of force. Upon approval, the Department will begin extensive and accelerated training of the policy.
- **Personnel Information Management System (PIMS)** - A psychologist was hired to help write the PIMS policy (the policy covers two tasks). The policy was distributed for OPD staff review on December 6, 2005, and it has been forwarded to the IMT and stakeholders for their review. The system will be used to analyze numerous factors associated to patterns of performance for all staff and will identify and initiate a process to proactively address “at risk” behavior. The Department’s contract with Motorola, who will serve as the carrier for PIMS, was approved by City Council Resolution No.79645 C.M.S., December 20, 2005 as contract No.05-0194.
- **Compliance Plan** – Each task has been assigned a Compliance Assessor to conduct audits, inspections, and solve problems when deficiencies are identified. Assessors are required to complete a progress report on the 1<sup>st</sup> and 15<sup>th</sup> of the month. They have identified many discrepancies and made appropriate corrections allowing the Department to progress towards full compliance. Also, an executive staff member (captain or above) is associated with every phase of the plan, and attended a compliance retreat on November 5, 2005, to set compliance deadlines and examine ways to increase compliance.

## SUSTAINABLE OPPORTUNITIES

**Economic** - Effective implementation of the provisions of the Agreement will help reduce or prevent the incidence of litigation in the areas of use of force, civil rights, conduct, and other activities that expose the City to liability costs, judgment pay-outs. Large payouts result in less than favorable media portrayals of the City, elicit adverse public reactions, and have a negative impact on the City’s economy.

**Environmental** - No environmental opportunities are contained in this report.

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**Social Equity** - The purpose of the Agreement is to promote police integrity and prevent conduct that deprives persons of the rights, privileges and immunities secured or protected by the Constitution or laws of the United States.

The overall objective of the Negotiated Settlement Agreement (initially with the oversight of an outside monitoring body) is to provide expeditious implementation of the best available practices and procedures for police management. Areas included are supervision, training, and accountability, which will enhance the ability of the Oakland Police Department to protect the lives, rights, dignity, and property of the community it serves.

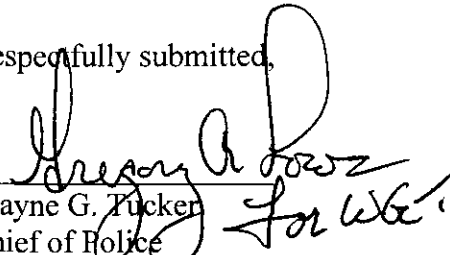
**DISABILITY AND SENIOR CITIZEN ACCESS**

There are no ADA or Senior Citizen access issues contained in this report.

**RECOMMENDATION**

Staff recommends acceptance of this status report on the Police Department's plans to attain compliance with the terms of the Negotiated Settlement Agreement.

Respectfully submitted,



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Chief of Police

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Office of Inspector General  
Office of Chief of Police

APPROVED AND FORWARDED TO  
THE PUBLIC SAFETY COMMITTEE:



Office of the City Administrator